

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of: Martin Zilliacus	Atty. Docket No.: 004770.00261
Serial No.: 10/777,284	Group Art Unit: 2452
Filed: February 11, 2004	Examiner: DOAN, DUYEN MY
For: Apparatus and Associated Method for Downloading an Application With a Variable Lifetime to a Mobile Terminal	Confirmation No.: 5467

APPEAL BRIEF

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Sir:

This is the third appeal brief filed in this matter. After prosecution was re-opened following the filing of Appellant's first appeal brief, a new Office Action based many rejections on new combinations of documents. A second appeal brief was later filed by Applicants. After prosecution was re-opened again following the filing of Appellant's second appeal brief, the Office Action dated August 19, 2010, was issued and included various rejections based on new combinations of documents. This appeal is taken from the Office Action dated August 19, 2010 (hereinafter, "Office Action"). Appellant's Notice of Appeal was filed on November 19, 2010.

In accordance with MPEP 1207.04 (previous appeal fees can be applied to subsequent appeals if prosecution is reopened after previous appeals), in view of the prior fees paid by Appellant, no further fee is believed to be due in connection with this appeal brief. However, if the PTO determines that any fee is due, please charge any fees to our Deposit Account No. 19-0733. In addition, any extensions of time necessary for acceptance or entry of this paper are hereby requested.

REAL PARTY IN INTEREST

37 C.F.R. § 41.37(c)(1)(i)

The owner of this application, and the real party in interest, is Nokia Corporation of Espoo, Finland.

RELATED APPEALS AND INTERFERENCES

37 C.F.R. § 41.37(c)(1)(ii)

There are no related appeals or interferences.

STATUS OF CLAIMS

37 C.F.R. § 41.37(c)(1)(iii)

Claims 1-22 and 50-52 have been canceled. Claims 23-49 and 53-103 are pending and stand rejected. Appellant hereby appeals the rejection of claims 23-49 and 53-103.

STATUS OF AMENDMENTS

37 C.F.R. § 41.37(c)(1)(iv)

None.

SUMMARY OF CLAIMED SUBJECT MATTER

37 C.F.R. § 41.37(c)(1)(v)

In making reference herein to various embodiments in the specification text and/or drawings to explain the claimed invention, Appellant does not intend to limit the claims to those embodiments or examples; all references to the specification and drawings are illustrative unless otherwise explicitly stated.

Independent Claim 23

Independent claim 23 recites a method [FIG. 1; FIG. 2; page 5 lines 19-26] comprising:

connecting a first mobile terminal [FIG. 1 element 110] to an application database [FIG. 1 element 120] through a cellular communication network [FIG. 1 element 124], the application database containing at least one application having a variable selectable lifetime [FIG. 1 element 126; page 8 lines 7-16; page 9 lines 12-24];

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal [FIG. 3 step 312; FIG. 4 step 414; page 10 lines 21-23];

providing the application database with information identifying a user of the first mobile terminal [FIG. 4 step 424; page 12 lines 9-16];

receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable [FIG. 3 step 314; FIG. 4 step 418; page 10 lines 24-28];

downloading the chosen application from said application database to the first mobile terminal [FIG. 3 step 318; FIG. 4 step 426; page 11 lines 6-9]; and

storing indicia of the selected lifetime for the chosen application and of the information identifying the user, wherein the stored indicia corresponds to the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user [FIG. 4 step 424; page 6 lines 14-19 and 32-33; page 12 lines 9-29].

Dependent Claim 27

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 27, which is argued separately below.

Dependent claim 27 recites the method of claim 26, wherein the short-range connection is an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 29

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 29, which is argued separately below.

Dependent claim 29 recites the method of claim 23, wherein the information identifying the user is based on Subscriber Identity Module (SIM) information [page 8, line 31 to page 9, line 22].

Dependent Claim 30

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 30, which is argued separately below.

Dependent claim 30 recites the method of claim 23, further comprising the steps of:

receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21];

determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21]; and

downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application [page 6 lines 17-21; page 7 lines 4-9; page 12 line 18 to page 13 line 21].

Dependent Claim 37

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 37, which is argued separately below.

Dependent claim 37 recites the method of claim 36, wherein the short-range connection is an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Independent Claim 41

Independent claim 41 recites an apparatus comprising:

a network infrastructure [FIG. 1 element 124] configured to communicate with at least one mobile terminal [FIG. 1 element 110; page 8 lines 7-16; page 9 lines 12-24];

an application database [FIG. 1 element 120] containing at least one downloadable application, the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user [page 8 lines 7-16; page 9 lines 12-24];

a downloading server [FIG. 1 element 118] configured to communicate through the network infrastructure [FIG. 1 element 124] and configured to detect a request containing information identifying a user to download a chosen application of the at least one application

contained in the application database, the downloading server being further configured to obtain the application from the application database, and to download the application to the at least one mobile terminal [FIG. 1 element 110; page 6 lines 12-21]; and

an application-license database [FIG. 1 element 122] coupled to the downloading server, the application-license database configured to store the selected variable lifetime and the user-identifying information [FIG. 2 elements 234, 23; page 6 lines 12-21];

wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application [page 6 lines 12-21; page 13 lines 4-21].

Dependent Claim 42

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 42, which is argued separately below.

Dependent claim 42 recites the apparatus of claim 41 wherein said downloadable application is preprogrammed with the selected lifetime, wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires [FIG. 3 step 322; page 6 lines 5-11].

Independent Claim 45

Independent claim 45 recites an apparatus comprising:

a central processing unit (CPU) [FIG. 1 element 214; page 8 lines 22-30];

a memory unit coupled with the CPU and configured to store at least one application [FIG. 1 element 112; page 8 lines 22-30];

an application requestor coupled with the CPU and configured to generate requests to download a variable-lifetime application from an application database [page 10 lines 21-30];

a lifetime selector coupled with the CPU and configured to select a variable lifetime applicable to a downloaded application [page 10 lines 21-30];

a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application [page 10 lines 21-30]; and

an application disabler coupled with the CPU and configured to disable an application [page 10 lines 21-30; page 14 line 29 to page 15 line 3];

wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains [page 10 lines 21-30; page 14 line 29 to page 15 line 3].

Dependent Claim 47

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO's practice of routinely rejecting appeal briefs for "non-compliance" with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 47, which is argued separately below.

Dependent claim 47 recites the apparatus of claim 45, wherein the application disabler is configured to delete an application with lifetime remaining in order to free storage space in the memory unit [page 5 lines 19-26].

Independent Claim 53

Independent claim 53 recites a method comprising:

receiving a selected choice of a first application from a mobile terminal [FIG. 1 element 110], the first application being one of a plurality of applications [FIG. 1 element 126; FIG. 3 step 312; FIG. 4 step 414; page 6 lines 22-34]; and

receiving the first application via a wireless network [FIG. 1 element 116], the first application being configured to become unavailable for use on the mobile terminal upon either

expiration of a time period selectable by a user of the mobile terminal [page 6 lines 7-34; page 10 lines 21-33], or

use of the first application a number of times selectable by a user of the mobile terminal [page 6 lines 7-34; page 10 lines 21-33].

Dependent Claim 56

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 56, which is argued separately below.

Dependent claim 56 recites the method of claim 55, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 59

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 59, which is argued separately below.

Dependent claim 59 recites the method of claim 53, wherein the first application is configured to become unavailable by becoming non-functional [page 10 lines 27-29].

Dependent Claim 60

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 60, which is argued separately below.

Dependent claim 60 recites the method of claim 53, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself [page 6 lines 8-11; page 11 lines 16-24].

Dependent Claim 61

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with

this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 61, which is argued separately below.

Dependent claim 61 recites the method of claim 60, wherein the first application is configured to delete only executable code [page 11 lines 16-24].

Dependent Claim 62

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 62, which is argued separately below.

Dependent claim 62 recites the method of claim 60, wherein the first application is configured to retain customized settings in the mobile terminal [page 11 lines 16-24].

Dependent Claim 63

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 63, which is argued separately below.

Dependent claim 63 recites the method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first application if time remains in the predetermined time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 64

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 64, which is argued separately below.

Dependent claim 64 recites the method of claim 53, further comprising:

subsequently receiving a re-selected choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first application if the first application has been used less than the predetermined number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-34].

Dependent Claim 66

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 66, which is argued separately below.

Dependent claim 66 recites the method of claim 53, further comprising:

making an initial payment for the first application [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving another selection of the first application [page 6 lines 12-21];

again receiving the first application if there is time remaining in the user-selected time period [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment [page 6 lines 12-21; Abstract].

Dependent Claim 67

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 67, which is argued separately below.

Dependent claim 67 recites the method of claim 53, further comprising:

making an initial payment for the first application [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving another selection of the first application [page 6 lines 12-21];

again receiving the first application if the first application has been used less than the user-selected number of times [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment [page 6 lines 12-21; Abstract].

Dependent Claim 71

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v)

– in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 71, which is argued separately below.

Dependent claim 71 recites the method of claim 53, further comprising deleting a pre-existing application to create memory space for the first application [page 13, lines 4-21].

Independent Claim 74

Independent claim 74 recites a method comprising steps of:

receiving a choice of a first ringing tone at a mobile terminal, the first ringing tone being one of a plurality of ringing tones [page 4 lines 25-27; FIG. 1 element 110; FIG. 1 element 126; FIG. 3 step 312; FIG. 4 step 414; page 6 lines 22-34]; and

receiving the first ringing tone via a wireless network [FIG. 1 element 116], the first ringing tone being configured to become unavailable for use on the mobile terminal upon either expiration of a user-selectable time period [page 6 lines 7-34; page 10 lines 21-33], or

use of the first ringing tone a user-selectable number of times [page 6 lines 7-34; page 10 lines 21-33].

Dependent Claim 77

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 77, which is argued separately below.

Dependent claim 77 recites the method of claim 76, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 80

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 80, which is argued separately below.

Dependent claim 80 recites the method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone [page 4 lines 25-29; page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first ringing tone if there is time remaining in the user-selected time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 81

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 81, which is argued separately below.

Dependent claim 81 recites the method of claim 74, further comprising:

subsequently receiving a re-selection of the first ringing tone [page 4 lines 25-29; page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 83

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 83, which is argued separately below.

Dependent claim 83 recites the method of claim 74, further comprising:

making an initial payment for the first ringing tone [FIG. 3 step 316; page 11 lines 4-15];

subsequently receiving a re-selection of the first ringing tone [page 6 lines 12-21];

again receiving the first ringing if there is time remaining in the user-selected time period [page 6 lines 12-21; Abstract]; and

making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment [page 6 lines 12-21; Abstract].

Dependent Claim 84

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 84, which is argued separately below.

Dependent claim 84 recites the method of claim 74, further comprising:
making an initial payment for the first ringing tone [FIG. 3 step 316; page 11 lines 4-15];
subsequently receiving a re-selection of the first ringing tone;
again receiving the first ringing tone if the first ringing tone has been used less
than the user-selected number of times [page 6 lines 12-21; Abstract]; and
making additional payment for said again receiving the first ringing tone, wherein
the amount of said additional payment is reduced from the amount of the first payment [page 6
lines 12-21; Abstract].

Independent Claim 86

Independent claim 86 recites apparatus comprising:
a memory [FIG. 1 element 112; page 8 lines 22-30]; and
a central processing unit (CPU) [FIG. 2 element 214; page 8 lines 22-30], wherein
the apparatus is configured to perform
transmitting over a wireless communication network [FIG. 1 element 116]
a choice of a first application, the first application being one of a plurality of applications [FIG. 3
step 312; page 10 lines 21-23],
receiving the first application via the wireless network, the first
application being configured to become unavailable for use on the apparatus upon either
expiration of a user-selectable time period [page 6 lines 7-34; page
10 lines 21-33], or
use of the first application a user-selectable number of times [page
6 lines 7-34; page 10 lines 21-33], and
storing the first application in the memory [page 6 lines 1-11].

Dependent Claim 89

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 89, which is argued separately below.

Dependent claim 89 recites the apparatus of claim 88, wherein the short-range wireless communication comprises an infrared connection [page 12 lines 7-8; page 14 lines 15-17].

Dependent Claim 92

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 92, which is argued separately below.

Dependent claim 92 recites the apparatus of claim 86, wherein the first application is configured to become unavailable by becoming non-functional [page 10 lines 27-29].

Dependent Claim 93

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 93, which is argued separately below.

Dependent claim 93 recites the apparatus of claim 86, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself [page 6 lines 8-11; page 11 lines 16-24].

Dependent Claim 94

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 94, which is argued separately below.

Dependent claim 94 recites the apparatus of claim 93, wherein the first application is configured to delete only executable code [page 11 lines 16-24].

Dependent Claim 95

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 95, which is argued separately below.

Dependent claim 95 recites the apparatus of claim 93, wherein the first application is configured to retain customized settings in the apparatus [page 11 lines 16-24].

Dependent Claim 96

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R § 41.37(c)(1)(v)

– in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 96, which is argued separately below.

Dependent claim 96 recites the apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10], and

again receive the first application if time remains in the user-selected time period [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

Dependent Claim 97

While the PTO regulations do not require a summary of claimed subject matter for dependent claims unless they recite means-plus-function clauses – see 37 C.F.R. § 41.37(c)(1)(v) – in view of the PTO’s practice of routinely rejecting appeal briefs for “non-compliance” with this rule whenever a dependent claim is separately argued, Appellant nevertheless submits a summary of dependent claim 97, which is argued separately below.

Dependent claim 97 recites the apparatus of claim 86, wherein the apparatus is further configured to

transmit a subsequent re-choice of the first application [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10]; and

again receive the first application if the first application has been used less than the user-selected number of times [page 5 lines 3-11; page 7 lines 5-8; page 13 lines 4-10].

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

37 C.F.R. § 41.37(c)(1)(vi)

Claims 23-26, 28 and 38-40 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold (U.S. Patent 5,940,504) in view of Ishida (U.S. Patent Application Publication No. 2002/0002042).

Claim 27 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of McCormack et al. (U.S. Patent 6,360,255, hereinafter “McCormack”).

Claim 29 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of the examiner’s Official Notice.

Claims 30-36 and 41-44 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of Kim (U.S. Patent 6,546,002).

Claim 37 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Kim and further in view of McCormack.

Claims 45-46, 48-49, 53-55, 57-59, 65-69, 73, 86-88, 90-92, 98-100, and 102-103 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of Stefik (U.S. Patent 5,715,403).

Claims 47, 60-62, 71 and 93-95 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of Forbes et al. (U.S. Patent 6,381,742, hereinafter “Forbes”).

Claims 56 and 89 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik and further in view of McCormack.

Claims 63-64, 70, 72, 96 and 97 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik and further in view of Kim.

Claims 74-76, 78-79, 82, 85 and 101 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik and further in view of Lin (U.S. Patent 6,366,791).

Claim 77 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik in view of Lin and further in view of McCormack.

Claims 80-81 and 83-84 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik in view of Lin and further in view of Kim.

Appellant appeals the rejection of all of the above-identified claims.

ARGUMENT

37 C.F.R. § 41.37(c)(1)(vii)

A. Rejection Based on Griswold in view of Ishida

Claims 23-26, 28 and 38-40 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida. According to the Office Action, Griswold does not disclose “a user specified selection of a variable lifetime,” as recited in claim 23. (Office Action, page 3.) The Office Action states that Ishida teaches a user-specified selection of a variable lifetime. According to the Office Action, it would have been obvious to combine Griswold with Ishida “because they are analogous art.” (Office Action, page 3.) Additionally, according to the Office Action, “[a] person would have been motivated to modify [Griswold] with Ishida for the purpose of providing the end user with flexibility of specified [sic] their own use term for the application.” (Office Action, page 3.)

Appellant respectfully submits that no proper reason has been shown for combining Griswold, which relates to a license management system for computer software, with the radio selective calling apparatus of Ishida. First of all, the cited portion of Ishida (paragraph [0005]) says nothing about managing licensed products. In fact, nowhere does Ishida use the term “license” or any similar term. Instead, Ishida merely describes erasing message data after an expiration of a period preset by a user (see Ishida, paragraph [0005]). There would be no apparent reason to modify the software license management system like Griswold with a radio selective calling apparatus of Ishida. Indeed, providing “the user with flexibility” is inapposite to the teachings of Griswold. For example, Griswold is specifically directed to a system that sends requests to a licensor from a licensee and receives replies from the licensor, where the licensed product reacts in accordance with instructions within the reply (see, e.g., Griswold, Figure 1, col. 3, line 30 – col. 4, line 45). If replies are not received, the product denies access to the user (see Griswold, col. 4, ll. 19-22). Thus, providing the user with “flexibility” would be inappropriate insofar as it deviates from enforcing the licensor’s license and/or instructions.

Further, Appellant submits that this hindsight-based reasoning is not permitted under KSR and does not reflect a proper reason to combine the software licensing system of Griswold with the radio selective calling apparatus of Ishida. Accordingly, Appellant submits that the proposed combination is improper and the claims are not properly rejected on this basis.

Additionally, even if Ishida and Griswold were combined as suggested, the combination would not disclose the features of claim 23 and the claims that depend therefrom. The Office Action points to Ishida at paragraph [0005] as disclosing the feature of selecting a lifetime for the chosen application. But that portion merely discloses erasing message data from a calling

apparatus after an expiration of a period preset by a user, not “receiving a user-specified selection of a variable lifetime for the chosen application,” as recited in claim 23. Indeed, even assuming, without admitting, that the “period preset by a user,” as described in Ishida, is equivalent to “a lifetime,” as recited in claim 23, it is not a “variable lifetime for the chosen application,” as recited in claim 23. Consequently, the rejection of claim 23 on the basis of Griswold and Ishida is respectfully traversed.

B. Rejection Based on Griswold in view of Ishida in view of McCormack

Claim 27 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of McCormack. Claim 27 recites an infrared connection. In its rejection of claim 27, the Office Action, at page 5, cites McCormack at col. 15 lines 55-56. According to the Office Action, it would have been obvious to combine Griswold-Ishida with McCormack “because they’re analogous art.” (Office Action, page 5.) Additionally, according to the Office Action, “[a] person would have been motivated to modify [Griswold]-Ishida [with McCormack] for the purpose of providing the end user with wide range [sic] of communication environment [sic].” (Office Action, page 5.)

Appellant submits that this hindsight-based reasoning is not permitted under KSR and does not reflect a proper reason to combine Griswold-Ishida with McCormack. Accordingly, Appellant submits that the proposed combination is improper and the claims are not properly rejected on this basis.

Additionally, even if Griswold-Ishida and McCormack were combined as suggested, the combination would not disclose the features of claim 27. For example, McCormack at col. 15, line 55 mentions infrared data communications as being able to generate types of transmission

media (e.g., light waves); however, merely mentioning infrared data communications does not teach or suggest that the short-range connection, on which the step of downloading over the wireless connection is achieved, is “an infrared connection,” as recited in claim 27.

C. Rejection Based on Griswold in view of Ishida in view of Official Notice

Claim 29 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of Official Notice. Claim 29 recites wherein the information identifying the user is based on Subscriber Identity Module (SIM) information. In its rejection of claim 29, the Office Action, at page 5, takes Official Notice that “SIM is well known at the time the invention was made [sic].” (Office Action, page 6.) According to the Office Action, it would have been obvious to combine Griswold-Ishida with SIM “because they’re well known.” (Office Action, page 6.) Additionally, according to the Office Action, “[a] person would have been motivated to modify [Griswold]-Ishida [with SIM] for the purpose of identifying the end user device.” (Office Action, page 6.)

Appellant submits that this hindsight-based reasoning is not permitted under KSR and does not reflect a proper reason to combine Griswold-Ishida with McCormack. Accordingly, Appellant submits that the proposed combination is improper and the claims are not properly rejected on this basis.

Additionally, even if Griswold-Ishida and the Official Notice were combined as suggested, the combination would not disclose the features of claim 29. For example, even assuming, without admitting, that SIM was well known in the art at the time the invention was made, the merely incorporating SIM into a system does not teach or suggest a system “wherein

the information identifying the user is based on Subscriber Identity Module (SIM) information,” as recited by claim 29.

D. Rejection Based on Griswold in view of Ishida in view of Kim

Claims 30-36 and 41-44 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of Kim (U.S. Patent 6,546,002).

I. Dependent Claim 30

Dependent claim 30 recites downloading the application a subsequent time if at least a portion of the selected lifetime remains. In its rejection of claim 30, the Office Action cites various portions of Kim but does not identify specifically which portion is alleged as describing the above feature of dependent claim 30. (Office Action, page 7.) The Office Action at page 7, lists the following portions of Kim: col. 3, lines 23-37; col. 4, lines 1-10; col. 6, lines 1-16; col. 7, lines 12-30; col. 9, lines 3-22; col. 12, lines 8-22; and col. 13, lines 35-53. Appellant has carefully studied the cited portions of Kim but can find nothing about downloading the application a subsequent time if at least a portion of the selected lifetime remains. The paragraph of Kim at col. 3, lines 23-37 does mention a few different license paradigms, but there is simply no suggestion – nor is it inherent – that the user in Kim can re-download the product a second time if the license term has not yet expired. Kim merely discloses allowing a re-installation of a product. See, e.g., Kim, col. 3, lines 31-47. Re-installation is conceptually separate from re-downloading, and does not teach or suggest re-downloading the product a second time if the license term has not yet expired. Accordingly, the rejection of these claims is traversed.

III. Independent Claim 41

The Office Action rejects independent claim 41 under a combination of Griswold, Ishida and Kim; however, the Office Action does not cite Kim for support of its rejection of claim 41. Instead, the Office Action merely states that “the limitations of claims 41 are similar to the limitations of 23 and 30-36, therefore rejected for the same rationale.” (Office Action, page 8.) Similar to the features discussed above with respect to claim 23, independent claim 41 recites “the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user.” Accordingly, independent claim 41 is allowable for the same reasons as claim 23, which is discussed above.

IV. Dependent Claim 42

Dependent claim 42 recites “wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires.” In its rejection of claim 42, the Office Action cites Ishida, paragraph [0058] as allegedly describing this feature. Appellant has carefully studied the cited portion of Ishida but can find no such feature. Paragraph [0058] of Ishida does mention that a message may include a time period where the message data is not erased, but there is simply no suggestion – nor is it inherent – that the message in Ishida is configured to delete itself when then the selected lifetime expires. Ishida merely discloses data “for designating a ‘valid period’ indicating the time interval during which the message data is not erased.” Ishida, paragraph [0058]. Accordingly, the rejection of this claim is traversed.

E. Rejection Based on Griswold in view of Ishida in view of Kim in view of McCormack

Claim 37 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Kim and further in view of McCormack. The Office Action relies on McCormack in its rejection of claim 37. (Office Action, page 9.) Claim 37 recites features substantially similar to claim 27, and is allowable over McCormack for the same reasons as discussed above with respect to claim 27. Any addition of Kim fails to cure the noted deficiencies of Griswold, Ishida and McCormack.

F. Rejection Based on Griswold in view of Ishida in view of Stefik

Claims 45-46, 48-49, 53-55, 57-59, 65-69, 73, 86-88, 90-92, 98-100, and 102-103 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida and further in view of Stefik.

Independent Claim 45

The Office Action relies on Ishida as allegedly describing the variable lifetime of claim 45. (Office Action, page 10.) As described above with respect to claim 23, Ishida fails to teach or suggest such a feature. Additionally, in its rejection of independent claim 45, the Office Action relies on Stefik as allegedly describing “an application disabler coupled with the CPU and configured to disable an application.” (Office Action, page 11.) The Office Action states that it would have been obvious to combine Stefik with Lin and Griswold “for the purpose of controlling the distribution of digital work.” *Id.* Appellant submits that no proper reason has been given for combining the license management system of Griswold and the radio selective calling apparatus of Ishida with the system for controlling the distribution of digital works of Stefik. Moreover, the radio selective calling apparatus is far afield from Griswold or Stefik. Accordingly, the proposed combination is improper.

Even if Stefik were properly combined with Lin or Griswold, the combination would not result in the one or more of the claim limitations as alleged by the Office Action. In its rejection of claim 45, the Office Action cites Stefik, col. 2, ll. 1-6; col. 3, ll. 8-19; and col. 4, ll. 25-39, as allegedly describing this feature. Appellant has carefully studied the cited portion of Stefik but can find nothing about an application disabler coupled with the CPU and configured to disable an application. Col. 2, ll. 1-6 of Stefik does mention an application can be disabled, but there is simply no suggestion – nor is it inherent – that “an application disabler coupled with the CPU and configured to disable an application” is performing the disabling of Stefik. Accordingly, the rejection of this claim is traversed.

Independent Claims 53 and 86

Independent claim 53 recites, among other features, a time period selectable by a user. The Office Action, at page 12, relies on its reasoning for rejecting claim 45 as its reasoning for rejecting the features of claim 53. Thus, the Office Action relies on Ishida for the “time period selectable by a user,” as recited by claim 53. For similar reasons discussed above with respect to claims 23 and 45, Ishida fails to teach or suggest such features.

Similarly, Independent claim 86 recites, among other features, “a user-selectable time period.” The Office Action, at pages 14-15, relies on its reasoning for rejecting claim 53 (and by virtue of that dependency, its reasoning of claim 45) as its reasoning for rejecting the features of claim 86. Thus, the Office Action relies on Ishida for the “user-selectable time period,” as recited by claim 86. For similar reasons discussed above with respect to claims 23, 45 and 53, Ishida fails to teach or suggest such features.

Dependent Claim 59 and Dependent Claim 92

For example, claim 59 and 92 both recite “the first application is configured to become unavailable by becoming non-functional.” The Office Action relies on Stefik at col. 2, ll. 1-6; col. 3, ll. 8-19; and col. 4, ll. 25-39, as allegedly describing these features. While Stefik does mention (e.g., at col. 2, ll. 1-6) that applications can be disabled, merely disabling an application does not teach or suggest an application “configured to become unavailable by becoming non-functional,” as recited in claims 59 and 92. At any rate, the digital works in Stefik are not configured to become non-functional – the “usage rights” for the digital works are enforced by another entity (e.g., the repositories). *See, e.g.*, Stefik, col. 4, lines 25-39. In other words, the digital works themselves are not “configured” to do anything. Therefore, the rejection of these claims is respectfully traversed.

Dependent claims 66 and 67

Claim 66 recites “again receiving the first application if there is time remaining in the user-selected time period.” Claim 67 recites “again receiving the first application if the first application has been used less than the user-selected number of times. The Office Action relies on Griswold for these features and cited various portions of Griswold as allegedly describing the features of 66 and 67 (e.g., Griswold at col. 4, ll. 14-18; col. 6, ll. 62-67; col. 7, ll. 3-26; col. 9, ll. 57-67; and col. 10, ll. 1-13). Applicant has carefully reviewed these portions of Griswold but can find no teaching of “again receiving the first application if there is time remaining in the user-selected time period.”

In Griswold, the user can use the product until the license term expires. There is simply no teaching or suggestion – nor is it inherent – in Griswold that the product can be re-

downloaded a second time if there is time remaining in the user-selected time period or if the application has been used less than the user-selected number of times. Griswold merely discloses downloading the product once and then keeping it activated until the expiration of the license. Accordingly, the rejection of these claims is traversed.

G. Rejection Based on Lin in view of Griswold in view of Forbes

Claims 47, 60-62, 71 and 93-95 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lin in view of Griswold and further in view of Forbes.

Dependent Claim 47

Dependent claim 47 recites that the application disabler is “configured to delete an application with lifetime remaining in order to free storage space in the memory unit.” The Office Action relies on Forbes at “col. 8, lines 23-17 [sic]” as allegedly describing this feature. (Office Action, page 15.) Forbes describes that a “package manager” can “delete the package entries from the installed package database...when the packages have been deleted from the FSC directory.” Forbes, col. 8, ll. 14-17. Merely deleting package entries does not teach or suggest an application disabler that is “configured to delete an application with lifetime remaining in order to free storage space in the memory unit,” as recited in claim 47. Accordingly, the rejection should be withdrawn.

Dependent Claims 60 and 93

As to dependent claims 60 and 93, which recite that the application “is configured to become unavailable by automatically deleting a portion of itself,” the Office Action again relies on Forbes at “col. 8 lines 23-17 [sic].” Forbes fails to teach or suggest an application configured to delete a portion of itself. In Forbes another entity performs the deletion (e.g., the package

manager). *See, e.g.*, Forbes, col. 8, ll. 14-17. Additionally, Forbes does not teach or suggest that any entity (either the package, the package manager, etc.) is configured to automatically delete a portion of itself. For these reasons, this rejection is improper.

Dependent Claims 61 and 94

As to dependent claims 61 and 94, which recite that the application “is configured to delete only executable code,” the Office Action again relies on Forbes at “col. 8 lines 23-17 [sic].” Forbes fails to teach or suggest an application configured to delete only executable code. In Forbes another entity performs the deletion (e.g., the package manager). *See, e.g.*, Forbes, col. 8, ll. 14-17. Additionally, Forbes does not teach or suggest that any entity (either the package, the package manager, etc.) is configured to delete only executable code. For these reasons, this rejection is improper.

Dependent Claims 62 and 95

As to dependent claims 62 and 95, which recite that the application “is configured to retain customized settings in the mobile terminal,” the Office Action again relies on Forbes at “col. 8 lines 23-17 [sic].” The cited portion of Forbes is not related to retaining customized setting in a mobile terminal. For these reasons, this rejection is improper.

Dependent Claim 71

As to dependent claim 71, which recites “deleting a pre-existing application to create memory space for the first application,” the Office Action again relies on Forbes at “col. 8 lines 23-17 [sic].” Forbes merely describes deleting package entries and/or packages. *See, e.g.*, Forbes, col. 8, ll. 14-17. Merely deleting package entries and/or packages does not contemplate

deleting a pre-existing application to create memory space for the first application. For these reasons, this rejection is improper.

H. Rejection Based on Griswold in view of Ishida in view of Stefik in view of McCormack

Claims 56 and 89 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik and further in view of McCormack. The Office Action relies on McCormack in its rejection of claim 56. (Office Action, pages 15-16.) Claims 56 and 89 recite features substantially similar to claim 27, and are allowable over McCormack for the same reasons as discussed above with respect to claim 27. Any addition of Stefik fails to cure the noted deficiencies of Griswold, Ishida and McCormack.

I. Rejection Based on Griswold in view of Ishida in view of Stefik in view of Kim

Claims 63-64, 70, 72, 96 and 97 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik and further in view of Kim.

Dependent Claims 63 and 96

Dependent claim 63 recites “again receiving the first application if the first application has been used less than the predetermined number of times.” In its rejection of claim 64, the Office Action cites various portions of Kim. (Office Action, page 16.) The Office Action at page 16, lists the following portions of Kim: col. 3, lines 23-37; col. 4, lines 1-10; col. 6, lines 1-16; col. 7, lines 12-30; col. 9, lines 3-22; col. 12; lines 8-22; and col. 13, lines 35-53. Appellant has carefully studied the cited portions of Kim but can find no such feature. The paragraph of Kim at col. 3, lines 23-37 does mention a few different license paradigms, but there is simply no suggestion – nor is it inherent – that the system of Kim can again receive the product “if time

remains in the predetermined time period.” Kim merely discloses allowing a re-installation of a product. *See, e.g.,* Kim, col. 3, lines 31-47. Accordingly, the rejection of these claims is traversed.

Dependent claim 96 recites “again [receiving] the first application if time remains in the user-selected time period,” and is allowable for the same reasons as dependent claim 63.

Dependent Claims 64 and 97

Dependent claim 64 recites “again receiving the first application if the first application has been used less than the predetermined number of times.” In its rejection of claim 64, the Office Action cites various portions of Kim. (Office Action, page 16.) The Office Action at page 16, lists the following portions of Kim: col. 3, lines 23-37; col. 4, lines 1-10; col. 6, lines 1-16; col. 7, lines 12-30; col. 9, lines 3-22; col. 12; lines 8-22; and col. 13, lines 35-53. Appellant has carefully studied the cited portions of Kim but can find no teaching of “again receiving the first application if the first application has been used less than the predetermined number of times.” The paragraph of Kim at col. 3, lines 23-37 does mention a few different license paradigms, but there is simply no suggestion – nor is it inherent – that the system of Kim can again receive the product “if the first application has been used less than the predetermined number of times.” Kim merely discloses allowing a re-installation of a product. *See, e.g.,* Kim, col. 3, lines 31-47. Accordingly, the rejection of these claims is traversed.

Dependent claim 97 recites “again [receiving] the first application if the first application has been used less than the user-selected number of times,” and is allowable for the same reasons as dependent claim 64.

J. Rejection Based on Griswold in view of Ishida in view of Stefik in view of Lin

Claims 74-76, 78-79, 82, 85 and 101 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik and further in view of Lin.

Independent Claim 74

Independent claim 74 recites, among other features, “a user-selectable time period.” The Office Action, at page 17, relies on its reasoning for rejecting claim 53 (and by virtue of that dependency, its reasoning of claim 45) as its reasoning for rejecting the features of claim 74. Thus, the Office Action relies on Ishida for the “user-selectable time period,” as recited by claim 74. For similar reasons discussed above with respect to claims 23, 45 and 53, Ishida fails to teach or suggest such features.

K. Rejection Based on Griswold in view of Ishida in view of Stefik in view of Lin in view of McCormack

Claim 77 stands rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik in view of Lin and further in view of McCormack. The Office Action relies on McCormack in its rejection of claim 77. (Office Action, pages 18-19.) Claim 77 recites features substantially similar to claim 27, and is allowable over McCormack for the same reasons as discussed above with respect to claim 27. Any addition of Stefik and Lin fails to cure the noted deficiencies of Griswold, Ishida and McCormack.

L. Rejection Based on Griswold in view of Ishida in view of Stefik in view of Lin in view of Kim

Claims 80-81 and 83-84 stand rejected under 35 U.S.C. § 103 as being unpatentable over Griswold in view of Ishida in view of Stefik in view of Lin and further in view of Kim.

Dependent Claims 80 and 83

Dependent claim 80 recites “again receiving the first ringing tone if there is time remaining in the user-selected time period.” In its rejection of claim 80, the Office Action cites various portions of Kim. (Office Action, pages 19-20.) The Office Action at page 16, lists the following portions of Kim: col. 3, lines 23-37; col. 4, lines 1-10; col. 6, lines 1-16; col. 7, lines 12-30; col. 9, lines 3-22; col. 12; lines 8-22; and col. 13, lines 35-53. Appellant has carefully studied the cited portions of Kim but can find no teaching of “again receiving the first ringing tone if there is time remaining in the user-selected time period.” The paragraph of Kim at col. 3, lines 23-37 does mention a few different license paradigms, but there is simply no suggestion – nor is it inherent – that the system of Kim can again receive the product “if there is time remaining in the user-selected time period.” Kim merely discloses allowing a re-installation of a product. *See, e.g.*, Kim, col. 3, lines 31-47. Accordingly, the rejection of these claims is traversed.

Dependent claim 83 recites “again receiving the first ringing if there is time remaining in the user-selected time period,” and is allowable for the same reasons as dependent claim 80.

Dependent Claims 81 and 84

Dependent claim 81 recites “again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times.” In its rejection of claim 81, the Office Action cites various portions of Kim. (Office Action, pages 19-20.) The Office Action at page 16, lists the following portions of Kim: col. 3, lines 23-37; col. 4, lines 1-10; col. 6, lines 1-16; col. 7, lines 12-30; col. 9, lines 3-22; col. 12; lines 8-22; and col. 13, lines 35-53. Appellant has carefully studied the cited portions of Kim but can find no teaching of “again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of

times.” The paragraph of Kim at col. 3, lines 23-37 does mention a few different license paradigms, but there is simply no suggestion – nor is it inherent – that the system of Kim can again receive the product “if the first ringing tone has been used less than the user-selected number of times.” Kim merely discloses allowing a re-installation of a product. *See, e.g.*, Kim, col. 3, lines 31-47. Accordingly, the rejection of these claims is traversed.

Dependent claim 84 recites “again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times,” and is allowable for the same reasons as dependent claim 80.

CONCLUSION

For all of the foregoing reasons, Appellant respectfully submits that the non-final rejection is improper and should be reversed.

Respectfully submitted,
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CLAIMS APPENDIX
37 C.F.R. § 41.37(c)(1)(viii)

Claims involved in the appeal:

23. A method comprising:

connecting a first mobile terminal to an application database through a cellular communication network, the application database containing at least one application having a variable selectable lifetime;

receiving a user-specified choice of the at least one application for downloading to the first mobile terminal;

providing the application database with information identifying a user of the first mobile terminal;

receiving a user-specified selection of a variable lifetime for the chosen application, during which lifetime the chosen application is executable;

downloading the chosen application from said application database to the first mobile terminal; and

storing indicia of the selected lifetime for the chosen application and of the information identifying the user, wherein the stored indicia corresponds to the selected lifetime during which the chosen application is further executable at mobile terminals accessible by the user.

24. The method of claim 23, wherein the step of downloading the chosen application is performed over a wireless connection.

25. The method of claim 24, wherein the step of downloading over a wireless connection is performed through the cellular communication network.
26. The method of claim 24, wherein the step of downloading over a wireless connection is achieved by way of a short-range connection.
27. The method of claim 26, wherein the short-range connection is an infrared connection.
28. The method of claim 23, wherein the indicia is stored in an application-license database in connection with the application database.
29. The method of claim 23, wherein the information identifying the user is based on Subscriber Identity Module (SIM) information.
30. The method of claim 23, further comprising the steps of:
receiving in the application database a request from the user for a subsequent downloading of a previously-downloaded application;
determining whether lifetime remains by reference to the stored indicia of the selected lifetime for a previously-downloaded application for the user; and

downloading the application a subsequent time, if it is determined that at least a portion of the selected lifetime remains for the requested application.

31. The method of claim 30, wherein the request is received from a second mobile terminal.
32. The method of claim 30, wherein the subsequent downloading comprises downloading the application to a second mobile terminal.
33. The method of claim 30, further comprising the step of refusing the request for subsequent downloading if the determination indicates that lifetime has expired in the stored indicia for said user.
34. The method of claim 30, wherein the step of downloading is performed over a wireless connection.
35. The method of claim 34, wherein the step of downloading over a wireless connection is performed through the cellular communication network.
36. The method of claim 34, wherein the downloading over a wireless connection is achieved by way of a short-range connection.
37. The method of claim 36, wherein the short-range connection is an infrared connection.

38. The method of claim 23, wherein the lifetime is a period of time measured from a predetermined starting time.

39. The method of claim 38, wherein the predetermined starting time is the time of downloading the chosen application.

40. The method of claim 23, wherein the lifetime is a predetermined number of downloads.

41. Apparatus comprising:

a network infrastructure configured to communicate with at least one mobile terminal;
an application database containing at least one downloadable application, the application having a user-selectable variable lifetime during which the application is permitted to remain executable by an identified user;

a downloading server configured to communicate through the network infrastructure and configured to detect a request containing information identifying a user to download a chosen application of the at least one application contained in the application database, the downloading server being further configured to obtain the application from the application database, and to download the application to the at least one mobile terminal; and

an application-license database coupled to the downloading server, the application-license database configured to store the selected variable lifetime and the user-identifying information;

wherein the downloading server is configured to compare the download request to the selected lifetime and the user-identifying information stored in the application-license database for the chosen application, wherein the downloading server is further configured to download said application if the user has application lifetime remaining for the requested application.

42. The apparatus of claim 41 wherein said downloadable application is preprogrammed with the selected lifetime, wherein the downloadable application is configured to delete itself from the at least one mobile terminal when the selected lifetime expires.

43. The apparatus of claim 41, wherein the selected lifetime expires as a function of a selected number of transactions.

44. The apparatus of claim 41, wherein the lifetime expires as a function of a selected time.

45. Apparatus comprising:

a central processing unit (CPU);

a memory unit coupled with the CPU and configured to store at least one application;

an application requestor coupled with the CPU and configured to generate requests to download a variable-lifetime application from an application database;

a lifetime selector coupled with the CPU and configured to select a variable lifetime applicable to a downloaded application;

a lifetime determiner coupled with the CPU and configured to determine a remaining portion of the lifetime associated with a downloaded application; and

an application disabler coupled with the CPU and configured to disable an application;

wherein the apparatus is operable to receive and store downloaded applications and to permit the downloaded application to be executed at the mobile terminal as long as a portion of its associated lifetime remains.

46. The apparatus of claim 45, wherein the application disabler is configured to disable an application when the associated lifetime has expired.

47. The apparatus of claim 45, wherein the application disabler is configured to delete an application with lifetime remaining in order to free storage space in the memory unit.

48. The apparatus of claim 45, wherein the application requester is operable to request a previously-downloaded application for which at least a portion of the associated lifetime remains.

49. The apparatus of claim 45, wherein the memory unit also stores lifetime indicia associated with downloaded applications.

53. A method comprising:

receiving a selected choice of a first application from a mobile terminal, the first application being one of a plurality of applications; and

receiving the first application via a wireless network, the first application being configured to become unavailable for use on the mobile terminal upon either

expiration of a time period selectable by a user of the mobile terminal, or

use of the first application a number of times selectable by a user of the mobile terminal.

54. The method of claim 53, wherein the wireless network is a cellular communication network.

55. The method of claim 53, wherein the wireless network comprises short-range wireless communication.

56. The method of claim 55, wherein the short-range wireless communication comprises an infrared connection.

57. The method of claim 53, further comprising receiving the user-selected time period for the first application from the mobile terminal.

58. The method of claim 53, further comprising receiving the user-selected number of times the first application may be used from the mobile terminal.

59. The method of claim 53, wherein the first application is configured to become unavailable by becoming non-functional.

60. The method of claim 53, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself.

61. The method of claim 60, wherein the first application is configured to delete only executable code.

62. The method of claim 60, wherein the first application is configured to retain customized settings in the mobile terminal.

63. The method of claim 53, further comprising:
subsequently receiving a re-selected choice of the first application; and
again receiving the first application if time remains in the predetermined time period.

64. The method of claim 53, further comprising:
subsequently receiving a re-selected choice of the first application; and

again receiving the first application if the first application has been used less than the predetermined number of times.

65. The method of claim 53, further comprising:

paying for the first application, wherein the amount of said payment is based on either the user-selectable time period or the user-selectable number of times.

66. The method of claim 53, further comprising:

making an initial payment for the first application;

subsequently receiving another selection of the first application;

again receiving the first application if there is time remaining in the user-selected time period; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment.

67. The method of claim 53, further comprising:

making an initial payment for the first application;

subsequently receiving another selection of the first application;

again receiving the first application if the first application has been used less than the user-selected number of times; and

making additional payment for said again receiving the first application, wherein the amount of said additional payment is reduced from the amount of the initial payment.

68. The method of claim 53, further comprising:

determining, at each attempt to use the first application, whether time remains in the user-selected time period, and

deleting the first application if time does not remain in the user-selected time period.

69. The method of claim 53, further comprising:

determining, at each attempt to use the first application, whether the first application has been used less than the user-selected number of times, and

deleting the first application if the first application has been used the user-selected number of times.

70. The method of claim 53, wherein said receiving a selected choice step comprises selecting a link at a website.

71. The method of claim 53, further comprising deleting a pre-existing application to create memory space for the first application.

72. The method of claim 53, wherein the first application is a game.

73. The method of claim 53, wherein the first application contains executable digital information.

74. A method comprising steps of:

receiving a choice of a first ringing tone at a mobile terminal, the first ringing tone being one of a plurality of ringing tones; and

receiving the first ringing tone via a wireless network, the first ringing tone being configured to become unavailable for use on the mobile terminal upon either

expiration of a user-selectable time period, or

use of the first ringing tone a user-selectable number of times.

75. The method of claim 74, wherein the wireless network is a cellular network.

76. The method of claim 74, wherein the wireless network comprises short-range wireless communication.

77. The method of claim 76, wherein the short-range wireless communication comprises an infrared connection.

78. The method of claim 74, further comprising receiving at the mobile terminal the user-selectable time period for the first ringing tone.

79. The method of claim 74, further comprising receiving at the mobile terminal the user-selectable number of times the first ringing tone may be used.

80. The method of claim 74, further comprising:
subsequently receiving a re-selection of the first ringing tone; and
again receiving the first ringing tone if there is time remaining in the user-selected time period.
81. The method of claim 74, further comprising:
subsequently receiving a re-selection of the first ringing tone; and
again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times.
82. The method of claim 74, further comprising:
paying for the first ringing tone, wherein the amount of said payment is based on either the user-selected time period or the user-selected number of times.
83. The method of claim 74, further comprising:
making an initial payment for the first ringing tone;
subsequently receiving a re-selection of the first ringing tone;
again receiving the first ringing if there is time remaining in the user-selected time period; and
making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment.

84. The method of claim 74, further comprising:
making an initial payment for the first ringing tone;
subsequently receiving a re-selection of the first ringing tone;
again receiving the first ringing tone if the first ringing tone has been used less than the user-selected number of times; and
making additional payment for said again receiving the first ringing tone, wherein the amount of said additional payment is reduced from the amount of the first payment.
85. The method of claim 74, wherein said choosing step comprises selecting a link at a website.
86. Apparatus comprising:
a memory; and
a central processing unit (CPU), wherein the apparatus is configured to perform
transmitting over a wireless communication network a choice of a first application, the first application being one of a plurality of applications,
receiving the first application via the wireless network, the first application being configured to become unavailable for use on the apparatus upon either
expiration of a user-selectable time period, or
use of the first application a user-selectable number of times, and
storing the first application in the memory.

87. The apparatus of claim 86, wherein the wireless network is a cellular communication network.

88. The apparatus of claim 86, wherein the wireless network comprises short-range wireless communication.

89. The apparatus of claim 88, wherein the short-range wireless communication comprises an infrared connection.

90. The apparatus of claim 86, wherein the mobile terminal is further configured to transmit a selection of the user-selectable time period for the first application.

91. The apparatus of claim 86, wherein the mobile terminal is further configured to transmit a selection of the user-selectable number of times the first application may be used.

92. The apparatus of claim 86, wherein the first application is configured to become unavailable by becoming non-functional.

93. The apparatus of claim 86, wherein the first application is configured to become unavailable by automatically deleting at least a portion of itself.

94. The apparatus of claim 93, wherein the first application is configured to delete only executable code.

95. The apparatus of claim 93, wherein the first application is configured to retain customized settings in the apparatus.

96. The apparatus of claim 86, wherein the apparatus is further configured to
transmit a subsequent re-choice of the first application, and
again receive the first application if time remains in the user-selected time period.

97. The apparatus of claim 86, wherein the apparatus is further configured to
transmit a subsequent re-choice of the first application; and
again receive the first application if the first application has been used less than
the user-selected number of times.

98. The apparatus of claim 86, wherein the apparatus is further configured to
determine, at each attempt to use the first application, whether time remains in the
user-selected time period, and
delete the first application if time does not remain in the user-selected time period.

99. The apparatus of claim 86, wherein the apparatus is further configured to

determine, at each attempt to use the first application, whether the first application has been used less than the user-selected number of times, and

delete the first application if the first application has been used the user-selected number of times.

100. The apparatus of claim 86, wherein said transmitting a choice comprises transmitting a selection of a link at a website.

101. The apparatus of claim 86, wherein the first application is a ringing tone.

102. The apparatus of claim 86, wherein the first application is a game.

103. The apparatus of claim 86, wherein the first application contains executable digital information.

EVIDENCE APPENDIX

37 C.F.R. § 41.37(c)(1)(ix)

NONE.

RELATED PROCEEDINGS APPENDIX

37 C.F.R. § 41.37(c)(1)(x)

NONE.